

Matter of: Infrared Technologies Corporation

File: B-255709

Date: March 23, 1994

Carlos Ghigliotti for the protester.
Walker L. Evey, National Aeronautics and Space
Administration, for the agency.
Andrew T. Pogany, Esq., Office of the General Counsel, GAO,
participated in the preparation of the decision.

DIGEST

1. Where brand name or equal solicitation for infrared thermal imagers required offerors to submit descriptive literature in order to establish technical acceptability (conformance with all salient characteristics), contracting agency properly determined that protester's blanket statement that its proposed product would meet solicitation's vibration requirements was not sufficient to demonstrate technical acceptability, and thus contracting agency properly rejected the offer notwithstanding its lower price.
2. In a brand name or equal procurement, the contracting agency enjoys a degree of discretion in determining whether an offeror has provided sufficient information to show that the offeror's product is acceptable; the General Accounting Office will not disturb such a determination unless that determination is unreasonable.

DECISION

Infrared Technologies Corporation protests the award of a contract to Inframetrics, Inc. under invitation for bids (IFB) No. 3-523916, issued by the National Aeronautics and Space Administration (NASA) for four infrared thermal imagers. The protester asserts that its proposal was improperly rejected as unacceptable and that award was

¹As explained below, the solicitation was subsequently converted to a negotiated procurement because the agency did not receive any responsive bids. We therefore at times refer to the bids that were considered and evaluated by the agency as "offers" or "proposals" that were found to be either technically acceptable or technically unacceptable.

improperly made to a firm which submitted a higher-priced proposal that did not conform to the solicitation's minimum requirements.

We deny the protest.

The IFB was issued on July 6, 1993, on a brand name (Mitsubishi IR-M300) or equal basis. The agency sought bids for one commercial version of the Mitsubishi or equal imager and three "ruggedized" versions, for a total of four units. The IFB required offerors to submit descriptive material necessary for the contracting officer to determine whether the product offered met the salient characteristics contained in the solicitation. Section C listed numerous specifications (salient characteristics) which the imagers were required to meet. As relevant here, Section C contained detailed technical specifications concerning vibration of the imager (with the camera operating). The IFB stated that failure of a bid to meet the requirements would render the bid nonresponsive.

The agency received four bids by the August 17, 1993, bid opening date. The agency evaluated all bids and found three bids, including the protester's, nonresponsive for failing to meet technical requirements. Specifically, the protester, in its bid, took exception to the solicitation's vibration requirements by stating as follows:

"We can meet or exceed all of the required specifications with the exception of the vibration specification. Therefore our [bid] for a ruggedized unit is without the capability to meet the additional vibrations."

The agency also found the fourth bid nonresponsive because the bidder had failed to sign the bid and had not completed the procurement integrity certification.

In the absence of any responsive bidder, the agency decided to cancel the IFB and complete the acquisition through negotiation. Federal Acquisition Regulation §§ 14.404-1(e)(1) and 15.103. By letter dated September 15, the contracting officer notified all four offerors of the cancellation and conversion of the sealed bid acquisition to a negotiated procurement. In his letter to the protester, the contracting officer specifically advised the firm to "provide . . . information [as to how] you can meet the [vibration] requirement." On September 20 and 21, the protester requested clarification from the agency of the vibration requirements; the agency responded on September 28. Finally, the protester, on October 5, simply responded to the agency's concerns about its failure to meet the vibration requirements as follows:

"[W]e are pleased to inform you that we can provide an enclosure that will meet the minimum vibration requirements."

No further technical explanation or literature was provided; instead, the protester posed additional technical questions to the agency that were totally unrelated to the vibration requirements.

Because the protester failed to explain its proposed compliance with the vibration specifications, the agency determined that its proposal was technically unacceptable and awarded the contract at a higher price to Inframetrics on October 14. This protest followed.

For the reasons that follow, we think the agency's rejection of the protester's proposal was reasonable. It is well-established that blanket statements of compliance or of the offeror's belief that its product is functionally compliant are not enough to demonstrate technical acceptability; rather, an offeror must affirmatively establish compliance with the salient characteristics. See United Satellite Sys., B-237517, Feb. 22, 1990, 90-1 CPD ¶ 201. Here, the protester took an exception in its original bid to the vibration requirements, was advised to correct this deficiency, and then merely offered the agency a general "blanket" statement of compliance. The protester did not provide any substantive technical response explaining how it would meet the vibration requirements of the solicitation. In the absence of a substantive technical response or explanation from the protester, we think the agency properly rejected the proposal as technically unacceptable. See id.

The protester also argues that the awardee's proposal failed to meet all minimum mandatory specifications of the solicitation.

In a brand name or equal procurement such as this one, the contracting agency is responsible for evaluating the data submitted by the offeror and ascertaining if it provides sufficient information to determine if the offeror's product

²Despite our conclusion that the protester was properly found to be technically unacceptable, the protester remains an interested party to challenge the award because the awardee was the only offeror found by the agency to be technically acceptable; if the awardee were found to be unacceptable, the agency would have to resolicit the requirement giving the protester another chance to compete. See Georgetown Univ., B-249365.2, Jan. 11, 1993, 93-1 CPD ¶ 87.

is acceptable. VG Instruments, Inc., B-241484, Feb. 7, 1991, 91-1 CPD ¶ 137. In making this determination, the agency enjoys a degree of discretion which we will not disturb unless we find that the determination is unreasonable. Id.

In its initial protest, the protester complained, for example, that the awardee could not provide a unit having a "built-in filter wheel with 4 filters"; or a unit having "[v]oltage level drivers"; or a cooler which provides a minimum 4,000 hours of operation without service.

The record shows that the solicitation specified an internal filter wheel having six filters. The descriptive literature submitted by the awardee stated that its imager "shall be modified to contain a filter wheel with six filter capacity." Drawings were submitted with the offer depicting satisfaction of this requirement. Concerning the "voltage level drivers," the record shows that the solicitation did not contain a salient characteristic requiring them. Thus, even if correct, the protester's contention would not be relevant to the agency's determination that the awardee's proposed imager met the solicitation's specifications. Concerning cooling, Inframetrics noted in its cover letter accompanying its bid that the "detector is cooled by Inframetrics Stirling Cycle Microcooler," which has "demonstrated greater than 4,000 operational hours without service." Inframetrics descriptive literature also stated concerning cooling capacity that its imager has "closed-cycle Stirling 4,000 hrs min." Accordingly, our review of the record shows no basis to disturb the agency's determination that the awardee had provided sufficient information for the agency to determine that the awardee's proposed item met the minimum requirements of the solicitation.

The protest is denied.

Robert P. Murphy
Acting General Counsel

³We have reviewed various additional miscellaneous and minor technical objections the protester has against acceptance of the awardee's proposal and find no merit to them.